



United States Department of the Interior

U. S. FISH AND WILDLIFE SERVICE

7915 BAYMEADOWS WAY, SUITE 200
JACKSONVILLE, FLORIDA 32256-7517

IN REPLY REFER TO:

28 March 2013

USFWS Section 7 Consultation Clearance for Federal Emergency Management Agency (FEMA) Conditional Letter of Map Revision (CLOMR) and CLOMR_F Letters of Request

Background

The U.S. Fish and Wildlife Service is the lead Federal Agency charged with the protection and conservation of Federal Trust Resources, such as threatened and endangered species and migratory birds, in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act, (16 U.S.C. 668-668d) (Eagle Act), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 701 et seq.).

FEMA has adopted a national policy to implement new requirements based on previous litigation and settlement agreements which directed the agency to demonstrate compliance with section 7 of the ESA for all projects proposed within Special Flood Hazard Areas where a CLOMR or CLOMR-F request is made for FEMA's review.

FEMA's comments address whether a proposed project meets the minimum floodplain management criteria of the [National Flood Insurance Program](#) (NFIP) and, if so, what revisions will be made to the effective NFIP map for a community if the project is completed as proposed.

CLOMRs are conditional approvals sought prior to any project proposed modifications of floodplains, floodways, or flood elevations based on physical and/or structural changes, which provide proponents a way to determine project feasibility before any alterations are started.

CLOMR-Fs are conditional approvals for projects placing fill in the floodplain.

FEMA can act as the proponent's representative to the consulting agency, such as the U.S. Fish and Wildlife Service or National Marine Fisheries Service (collectively "the Services"). Demonstration of compliance with the ESA is required as a result of the section 7 consultation before FEMA will approve the CLOMR.

Given the preceding circumstances above, the North Florida Ecological Services Office has experienced an increase in the number of FEMA CLOMR/CLOMR-F requests. In order to fulfill our ESA statutory obligations in a timely and consistent manner, and to assist FEMA, other federal agencies, state and local governments, and consultants in addressing section 7 and NEPA environmental impact review requirements, we provide the following guidance and

clearance relative to the criteria stated below for FEMA CLOMR/CLOMR-F letters of request throughout our 32-county geographic area (<http://www.fws.gov/northflorida/Area1.htm>).

Description of FEMA Requests and Project Criteria

- * **CLOMR** for projects with proposed modifications of floodplains, floodways, or flood elevations based on physical and/or structural changes; where the impact is less than 25 acres;
- * **CLOMR-Fs** for projects placing fill in the floodplain where the impact is less than 25 acres;

All such above-referenced projects where: 1) proposed building impacts will occur in areas previously cleared and/or filled; or 2) where proposed clearing and/or building is to occur where existing vegetation is grassed or very low growing shrub; and falls outside of the designated Core Foraging Area (CFA) of wood stork colonies relative to the Wood Stork Effect Determination Key located on our website (<http://www.fws.gov/northflorida/WoodStorks/wood-storks.htm>); or if impacts to CFA are 0.5 acres or less.

We believe that these activities will have "No Effect", and in some cases "Not Likely to Adversely Affect" any Federally-listed species protected under section 7 of the Endangered Species Act, based on the criteria referenced above.

This conclusion also takes into account previous activities/actions in locations where earlier regulatory reviews determined that either "no effects" were anticipated, or where impacts of any significance to Federally-listed species resulted in consultation where minimization measures and conditions have already been fulfilled.

Bald Eagle Nest Issues

If any of the above-referenced activities are proposed to occur **within 660 feet** of an active bald eagle's nest **during** the nesting season which occurs from October 1 through May 15; we recommend the applicant or their designated sub-contractor coordinate with , Bald Eagle Management Plan Coordinator, Florida Fish and Wildlife Conservation Commission at (352) 260-8699 or by e-mail at Michelle.Vandeventer@MyFWC.com, or with the Service's Migratory Birds Division by email at Ulgonda_Kirkpatrick@fws.gov. Guidance will be provided regarding monitoring options or other suggestions regarding construction timing relative to the distance the project is located to the bald eagle's nest, and according to any vegetative buffers that may be present between the nest and the construction activities.

Clearance to Proceed

For **ALL projects that meet the criteria** described above, **NO** further coordination with the Service is necessary.


For projects not covered by this letter, the following items are required for submittal to USFWS and FEMA in order for both agencies to make an appropriate determination of effect, or for the USFWS to concur with FEMA's initial determination of effect. These items include:

1. A description of the action to be considered;
2. A description of the specific area that may be affected by the action; this includes the total acreage of the project site and the amount of impact acreage; and an aerial photo with the project footprint delineated on the graphic;
3. A description of any listed species or critical habitat that may be affected by the action;
4. A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
5. Relevant reports, including any environmental impact statement, environmental assessment, biological assessment prepared; and surveys conducted;
6. Any other relevant available information on the action, the affected listed species, or critical habitat.

Additional Information

If you have any questions, please contact Candace Martino of my staff at (904)731-3142 or by email at jaxregs@fws.gov. Our agency appreciates your cooperation in the protection of Federally-listed species in Florida.

Sincerely,



Dawn Jennings
Acting Field Supervisor